770.

SUPREME COURT OF THE UNITED STATES.

No. 148.

PHILIP H. DE LANE, JOHN M. CHILES, MARTHA C. CHILES, JOHN E. LYKES, AND GRACE A. LYKES, APPELLANTS,

vs.

ANDREW B. MOORE AND JAMES L. GOREE, EXECUTORS OF JAMES L. GOREE, DECEASED.

ON APPEAL FROM THE DISTRICT COURT, UNITED STATES, FOR THE DISTRICT OF ALABAMA.

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UNITED STATES OF AMERICA,
Middle district of Alabama.

At a district court of the United States, for the middle district of Alabama, begun and held at Montgomery, on the first Monday after the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-nine.

Present, the honorable John Gayle, judge of said court.

Bill.

To the honorable William Crawford, judge of the district court of the United States of America, for the middle district of Alabama, at Tuscaloosa.

Your orator, Philip H. De Lane, who is a citizen of the State of South Carolina; your orator, John M. Chiles, and your oratrix, Martha C. Chiles, who are citizens of the State of Mississippi, said Martha C. being the wife of said John M. Chiles; your orator, John E. Lykes, and your oratrix, Grace A. Lykes, who are citizens of the State of Mississippi, said Grace A. being the wife of said John E. Lykes, bring this their bill against Andrew B. Moore and James L. Goree, who were appointed executors of the last will and testament of James L. Goree, deceased, who are citizens of the State of Alabama, residing in the middle district thereof; and thereupon your orators and oratrixes complain and say, that they, that is, said Philip H., said Martha C., and said Grace A., are the children of Anne Wood De Lane; there was one other child, Freeman De Lane, son of said Ann Wood, but said Freeman died long since an infant, without issue.

Complainants further show, that said Ann Wood De Lane, in the year eighteen hundred and sixteen, was a widow lady, residing in Columbia, in the State of South Carolina, and that in May of that year, as complainants believe and aver, an ante-nuptial contract or agreement was made and entered into between Anne Wood and her intended husband, of the place and State last aforesaid, and by name John Yancy; and further complainants aver, the said Anne Wood and the said John Yancy were lawfully married, and became man and wife.

The ante-nuptial contract aforesaid, that is, a copy thereof, is hereto attached, marked exhibit (A,) which complainants desire may be regarded as part of this their bill of complaint. By reference to said contract it will be seen, upon the death of either the said Anne Wood or the said John Yancy, the property therein mentioned went to the survivor, and on the death of the survivor to the children of the said Anne Wood De Lane "share and share alike."

Further it will be seen said John Yancy could not sell or dispose of said property therein mentioned without the consent of the said Anne

Wood De Lane. And now complainants aver, that the said Yancy did dispose of the negro slaves in said ante-nuptial contract mentioned, and that he did sell and dispose of them without the agreement or consent of said Anne Wood De Lane.

Further complainants aver, that their said mother, said Anne Wood, departed this life in Monroe county, State of Alabama, as they are informed and believe, while they were infants of tender years, and that said Yancy survived the said Anne Wood, and in the year eighteen hundred and thirty-five, as they are informed and believe, said Yancy likewise departed this life. But from the fact that said negro slaves were disposed of as aforesaid, and when complainants were infants, they could not ascertain, until within a few years past, where any of them could be found.

Complainants aver that said James L. Goree, deceased, in his lifetime purchased of said Yancy several of the negroes named in said ante-nuptial contract; that said Goree, deceased, did purchase or obtain possession of a certain woman, Linda, and her increase, at the time being several children, as well as others named in said ante-nuptial contract, without the consent or agreement of said Anne Wood De Lane, nor did said Anne Wood ever give her consent that any of the said slaves in said ante-nuptial contract should be in any wise disposed of to any one.

Complainants further aver, that said Andrew B. Moore, and said James L. Goree, were appointed executors of the last will and testament of said James L. Goree, deceased, and that the said woman, Linda, and her children, which she had before and after said decedent acquired possession of her, as well as others of the negroes named in said ante-nuptial contract, came into the possession of defendants, Moore and Goree, and that said defendants refused to deliver said woman, Linda, or any of her increase, or any of the other slaves named in said ante-nuptial contract, or any of their increase, to complainants, or the reasonable hire of said slaves, and the lawful interest thereon accruing.

Complainants aver that they know not from whom they can obtain proof to show how many of the negro slaves named in said ante-nuptial contract, or the number or value or names of their increase, which have come into the possession of said defendants, but from defendants themselves. Inasmuch, therefore, as your orator and oratrixes are remediless at common law, and can only in equity find relief: To the end, therefore, that said defendants may, if they can, show why your orator and oratrixes should not have the relief hereby prayed, and may upon their several and respective corporal oaths, and according to the best and utmost of their several respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to such of the several interrogatories hereinafter mentioned and set forth, as by the note here under written they are required to answer, that is to say:

Interrogatory 1st. Whether or not did said James L. Goree, deceased, ever obtain from said Yancy any negro slaves; if so, how many, and what were their names?

Interrogatory 2d. Has said woman, Linda, or any female slave of that

name, come into your possession as the property of said decedent; if so, what is her increase in number, in value, and in name?

Interrogatory 3d. Did any other slaves of the names of those mentioned in said ante-nuptial contract come into your possession as the property of said decedent; if so, from whom were they purchased; and if their increase be any, state their names, their number, and their value each.

Interrogatory 4th. What was the fair yearly hire of such of the slaves as have come into your possession as the property of decedent, which were purchased or obtained from said Yancy, and their increase from decedent's death up to this time?

Interrogatory 5th. What has become of the negroes about whom you have been in the foregoing interrogatories questioned; if sold, or otherwise disposed of, what was the respective value of each at the time of such disposition; if not disposed of, what is now their respective value?

And that said defendants, Moore and Goree, upon being served with the process of this court, may be bound by all the proceedings in this cause. And that said defendants be required to deliver to your orator and oratrixes said woman Linda and her increase, and such other slaves as were named in said ante-nuptial contract, and the increase of such as have come to their possession, and the yearly hire of such from the time of decedent's death, or such time as shall be found due from said defendants, and such other and further relief as your honor shall seem meet; and may it please your honor to grant unto your orator and oratrixes writs of subpœna, to be directed to said Andrew B. Moore and said James L. Goree, thereby commanding them under a certain pain, and at a certain day therein named, to be and appear before this honorable court, then and there full, true, direct, and perfect answers make to all and singular the premises; and further, to stand to and abide such further order, direction, and decree therein as to your honor shall seem meet.

S. D. J. MOORE,
Sol. for comp'ts.

Note.—Each defendant is required to answer each of the foregoing interrogatories, from one to five, inclusive.

S. D. J. MOORE,
Sol. for compl'ts.

We acknowledged ourselves security for costs in the prosecution of this suit.

Given under our hands and seals, 2d Jan'y, 1847.

SAML. D. J. MOORE. [SEAL.]

Filed in clerk's office of the district court of the United States, for the middle district of Alabama, the second day of January, A. D. 1847.

Test: A. G. GOOCH, *Clk.*

Spa. iss'd 2d Jan'y, 1847.

Exhibit A.

SOUTH CAROLINA, *Richland district.*

Articles of agreement made and entered into this twentieth of May' in the year of our Lord one thousand eight hundred and sixteen, between Anne Wood De Lane, of the one part, and John Yancy, of the other, both of the town of Columbia, witnesseth: Whereas a marriage is about to take place and be consummated between the said John Yancy and Anne Wood De Lane, and if the said intermarriage does take place, then the parties to these presents do covenant and agree as follows: the parties to this instrument being desirous of securing to the said Anne the right of granting and withholding her consent to the disposition of any of her estate made by the said John Yancy, and the said Anne being entitled to the following estate, both real and personal, to wit, to the negroes Daniel, Cyrus, Galloway, Ben, Mitchell, Jack, Ephraim, Tom, Ned, Edward, Grey, Daphine, Mary, Eve, Linder, Beck, and Sarah; and being seized and possessed of the following real estate, to wit, a lot of land lying in the town of Columbia, with the improvements thereon, being the lot purchased by the said Anne of James Young, fronting eighty-two feet on the Richardson street, bounded northwardly on the lot of Dr. John Hughes, westwardly on the lot of Ben. Rawls, southwardly on the lot around by George E. Smith; a more particular description thereof may be had by a reference to the deed of conveyance from the said James Young to the said Anne; and also of one tract of land lying in the district of Richland, containing one hundred acres in the vicinity of Columbia; and also of a valuable tract of land lying in the district of Richland, on the Congaree river, about eighteen miles below Columbia. Now, the parties to these presents do covenant and agree, that all the aforesaid estate, both real and personal, shall be and remain for the joint use, support, and enjoyment of the said John and Anne during their joint lives, and to the survivor of them during his or her life, and that the same shall be free from any debts, dues, demands, or contracts, of the said John, unless it be under the following conditions and restrictions: that the said John Yancy shall not have the right or power to dispose of any of the foregoing estate, either real or personal, unless the said Anne shall give her consent thereto; and it is expressly and clearly understood and agreed, that the said John Yancy shall have the right and power to dispose, sell, or convey any of the said estate upon his procuring and obtaining such consent. And it is hereby covenanted and stipulated, that the said Anne shall always have the right and power of granting or withholding her consent there[to] without resorting to the aid of the court of equity, or the intervention of a trustee; and all and every transference of any of the aforesaid estate made by the said John, with such consent of the said Anne, shall be good, effectual, lawful, valid, and binding, whether the same be made for his own separate use and benefit, or for the joint use of them both; and in any sale or transference of any of the said estate, either real or personal, the said John

shall not be compelled to settle an equivalent thereof on the said Anne, unless there be a stipulation to that effect by and between the parties; the right of making such stipulations is hereby reserved to the parties. And it is further covenanted and agreed, that all and every part of the aforesaid estate, either real or personal, that shall remain undisposed of during their joint lives, shall be and remain for the use, benefit, and support of the survivor during his or her natural life. And at his or her death the whole of the foregoing estate, both real and personal, shall be equally divided among all the children of the said Anne that may be then living, both of former intermarriage and those that may be born of the present intermarriage, share and share alike to them and their heirs forever. And it is the understanding and agreement, that none of the aforesaid estate, either real or personal, shall be liable for any debts, contracts, judgment, or execution that may now be against him, or that may hereafter be against him, unless by the mutual consent of parties as above stipulated. And it is further understood and agreed that nothing in this deed shall give the said Anne the exclusive right and power of disposing of any part of the foregoing estate without the concurrence, consent, and approbation of the said John Yancy.

In witness whereof the parties to these [presents] have hereto set their hands and seals the day and year above written.

JOHN YANCY, [L. S.]
ANNE W. DE LANE. [L. S.]

Signed and sealed in the presence of—
WALTER CRENSHAW,
JAMES YOUNG.

Attestation.

SOUTH CAROLINA,
Richland district.

Personally appeared before me James Young, and made oath that he saw John Yancy and Anne W. De Lane sign and seal the foregoing instrument of writing for the use and purposes therein mentioned.

JAMES YOUNG.

Sworn to before me, 24th July, 1816.

J. J. FAUST, *J. P.*

SECRETARY'S OFFICE,
Columbia, 11*th Septr.*, 1843.

I hereby certify the foregoing to be a true copy from miscellaneous. record book C, page 257, '58 and '59.

Given under my hand and the seal of the State, the day and the year above written.

W. F. ARTHUR,
Dept. Sec'y of State.

Subpœna to respondents.

UNITED STATES OF AMERICA,
District court of the United States,
for the middle district of Alabama.

(In chancery.)

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded to summon Andrew B. Moore and James L. Goree, "who were appointed executors of the last will and testament of James L. Goree, deceased, and who are citizens of the State of Alabama, residing in the middle district thereof," to be and appear before said court (exercising chancery jurisdiction in and for said district,) at rules, to be holden in the clerk's office of the court aforesaid, at Tuscaloosa, on the first Monday of February next, to answer a bill of complaint preferred against them in said court by Philip H. De Lane, who is a citizen of the State of South Carolina, and John M. Chiles and Martha C. Chiles, his wife, and John E. Lykes and Grace A. Lykes, his wife, who are citizens of the State of Mississippi, complainants; and *this* the said Andrew B. Moore and James L. Goree, defendants, shall in no wise omit under the penalty prescribed by law. Herein fail not, and have you then and there this writ.

Witness the hon. William Crawford, judge of the court aforesaid, this first Monday after the fourth Monday of November, A. D. 1846.

Issued the 2d day of January, A. D. 1847.

Attest: A. G. GOOCH,
Clerk, dist. court, middle dist., Alabama.

Memorandum.

The defendants are to enter their appearance in this suit in said clerk's office on or before the first Monday of February next; otherwise the bill may be taken "pro confesso."

Teste: A. G. GOOCH, *Clerk.*

Marshal's return.

Received the 5th of January, and executed on A. B. Moore the 5th Jan'y, '47.

JAMES G. LYON,
U. S. M.,
By A. R. THOMAS,
D. M. U. S.

Alias spa.

UNITED STATES OF AMERICA,
District court of the United States,
for the middle district of Alabama.
(In chancery.)

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded, as heretofore, to summon Andrew B. Moore and James L. Goree, "who were appointed executors of the last will and testament of James L. Goree, deceased, and who are citizens of the State of Alabama, residing in the middle district thereof," to be and appear before said court (exercising chancery jurisdiction in and for said district,) at rules, to be holden in the clerk's office of the court aforesaid, at Tuscaloosa, on the first Monday of April next, to answer a bill of complaint preferred against them in said court by Philip H. De Lane, who is a citizen of the State of South Carolina, and John M. Chiles and Martha C. Chiles, his wife, and John E. Lykes and Grace A. Lykes, his wife, who are citizens of the State of Mississippi, complainants, and this the said Andrew B. Moore and James L. Goree, defendants, shall in no wise omit, under the penalty prescribed by law. Herein fail not, and have you then and there this writ.

Witness the hon. William Crawford, judge of the court aforesaid, this first Monday after the fourth Monday of November, A. D. 1846.

Issued the 9th day of February, A. D. 1847.

Attest: A. G. GOOCH,
Clerk, district court, middle district of Alabama.

Memorandum.

The defendant, James L. Goree, is to enter his appearance in this suit in said clerk's office on or before the first Monday of April next; otherwise the bill may as to him, be taken "pro confesso."

Teste: A. G. GOOCH, *Clerk.*

This alias subpœna to be served only on defendant, James L. Goree, the original subpœna having been served on Andrew B. Moore, the other defendant.

Teste: A. G. GOOCH, *Clerk.*

Order at rules.

PHILIP H. DE LANE et als.
vs.
ANDREW B. MOORE and James L. Goree. } 12

On this 12th day of February, A. D. 1847, came said defendant, Andrew B. Moore, by E. W. Peck, esq., his solicitor, and entered his appearance in this cause.

Order at rules.

PHILIP H. DE LANE et als.
vs.
ANDREW B. MOORE and James L. Goree.

On this 27th day of February, A. D. 1847, came said defendants by E. W. Peck, esq., their solicitor, and filed each a separate answer to complainants' bill.

Answer of J. L. Goree.

The separate answer of James L. Goree to the bill of complaint of Philip H. De Lane, John M. Chiles, Martha C. Chiles, John E. Lykes, and Grace A. Lykes, in the district court of the United States of America, for the middle district of the State of Alabama:

This respondent, reserving to himself all right of exception to said bill of complaint, for answer thereunto says, in answer to the first interrogatory in said bill contained, that he does not know that said James L. Goree, deceased, ever obtained from said John Yancy any slave or slaves by purchase or otherwise, but is informed and believes that said decedent, in his lifetime, and in the lifetime of said Ann W. Yancy, did obtain from said John Yancy, about the year A. D. 1822, a negro woman named Lindy, and her child named Becky, in payment of a store account, contracted with said decedent whilst a merchant in Claiborne, in Monroe county, Alabama, by said John and Ann W. Yancy, for sugar, coffee, pork, butter, clothing, and other necessaries, to support, maintain, and clothe the said John and Ann W. Yancy and her children, the complainants, and the slaves conveyed in said marriage settlement.

In answer to the second interrogatory respondent says, that no other slave than the said woman Lindy ever came into his possession as the property of said decedent, (said child, Becky, having died shortly after she was purchased, as above stated, as he is informed and believes,) the increase of said woman, Lindy, that came into the possession of respondent, is seven in number, that is to say, Ephraim, a man; Dave, a man; Adaline, a woman, and her child, named Samuella; a boy named Silas, a boy named Nathan, and a boy named Mitchell. Said woman, Lindy, is worth about two hundred and fifty dollars; Ephraim, about five hundred dollars; Dave, about seven hundred and fifty dollars; Adaline, and child, Samuella, about five hundred dollars; Silas, about five hundred dollars; Nathan, about four hundred and fifty dollars; and Mitchell, about three hundred and fifty dollars.

In answer to the third interrogatory respondent says, that no other slaves mentioned in said ante-nuptial contract ever came into his possession as the property of said decedent, nor does he know that said woman, Lindy, is one of those slaves mentioned in said contract, as she has always been known, as he is informed and believes, by the name of Lindy, and by no other name.

In answer to the fourth interrogatory this respondent says, that he

finds much difficulty in determining the annual value of the hire of said slaves, Lindy, and her increase, as named in a preceding answer; said Ephraim having been diseased with scrofula, and said Adaline and Mitchell with rheumatism, and several of them being young and of but little value at the death of said decedent, but to the best of his belief they would, taken together, or separately, average in the aggregate, about three hundred and twenty or thirty dollars annually.

In answer to the fifty interrogatory respondent says, that the said slaves mentioned in the foregoing part of his answer have been disposed of; that they came into his possession and Andrew B. Moore, the other defendant, as executors of the last will and testament of said decedent, and that they had, long before the commencement of this suit, been distributed among, and delivered to the several legatees of said decedent, and are now in their possession, with the exception of the widow of decedent, Martha Goree, who neither owns, nor has either of them in possession; and that said will has been fully executed, and a final settlement made, and the executors discharged; which settlement was made on the second day of January, A. D. 1846, and that the respective of said slaves is about the same as that fixed in respondent's answer to the second interrogatory.

This respondent having fully answered all said interrogatories in said bill of complaint contained, further answers, and claims, and insists, that he be allowed the same benefit as if the same had been regularly pleaded:

1st. That said James L. Goree, deceased, was a bona fide purchaser of the said woman, Lindy, for valuable consideration without notice of the alleged marriage settlement.

2d. That more than six years had elapsed between the death of said John Yancy, who survived his said wife, the said Anne W. Yancy, and the commencement of this suit; and that, therefore, the said suit is barred by the statute of limitations.

3d. That the said pretended marriage settlement was made in the State of South Carolina, and was not recorded according to the laws of that State, and is therefore void, both as to this defendant and his intestate, who was a bona fide purchaser of the said slave, Lindy, of the said Yancy, without notice of the alleged marriage settlement.

4th. That if said marriage settlement had been properly recorded, or otherwise valid, the sale of said Lindy was made with the assent of the said Anne W. Yancy.

5th. That Lindy is not one of the names mentioned in the said marriage settlement.

6th. This respondent, and the other defendant, Andrew B. Moore, received said slaves as the executors of the last will and testament of said decedent as a part of his estate, and had, before this suit was commenced, disposed of them according to the provisions of said will by distribution and delivery to the legatees of said estate of said decedent; and that long before the commencement of this suit, made a final set-

tlement of said estate, and had been discharged from said executorship. All of which matters and things this respondent is ready and willing to aver, maintain, and prove, in such manner as this honorable court shall direct; and having fully answered what he is advised is material for him to answer in said bill of complaint, begs to be hence dismissed with his reasonable cost in this behalf wrongfully sustained.

THE STATE OF ALABAMA,
Perry county.

Personally came before me, John D. Phelan, judge of the circuit court of the first judicial circuit of the State of Alabama, James L. Goree, who, being by me first duly sworn, deposeth and saith, that the statement and facts contained in the foregoing answer are true, to the best of his knowledge, remembrance, information, and belief.

JAMES L. GOREE.

Sworn to and and subscribed before me, this 25th February, 1847.

JNO. D. PHELAN,
Judge 1st cir. of Ala.

Filed 27th February, 1847.
Teste: A. G. GOOCH,
Clerk.

Answer of A. B. Moore.

The separate answer of Andrew B. Moore to the bill of complaint of Philip H. De Lane, John M. Chiles, Martha E. Chiles, John E. Lykes, and Grace A. Lykes, in the district court of the United States of America, for the middle division of the State of Alabama.

This respondent, reserving to himself all right of exception to said bill of complaint, for answer thereunto saith, in answer to the first interrogatory in said bill contained, that he does not know that said James L. Goree, deceased, ever obtained from said John Yancy any slave or slaves, by purchase or otherwise, but is informed and believes that said decedent in his lifetime, and in the lifetime of said Anne W. Yancy, did obtain from said John Yancy, about the year A. D. 1822, a negro woman named Lindy, and her child named Becky, in payment of a store account contracted with said decedent whilst a merchant in Claiborne, in Monroe county, Alabama, by said John and Anne W. Yancy for sugar, coffee, pork, butter, clothing, and other necessaries, to support, maintain, and clothe the said Yancy and his said wife Anne W. and their children, the complainants, and the negro slaves conveyed in said ante-nuptial contract.

In answer to the second interrogatory this respondent says, that no other slave than the said woman Lindy ever came into his possession as the property of said decedent, (said child Becky having died shortly after she was purchased as above stated,) as he is informed and believes. The increase of said woman Linda that came into the possession of respondent is seven in number, that is to say: Ephraim, a man; Dan, a

man; Adaline, a woman, and her child, named Samuella; a boy named Silas, a boy named Nathan, and a boy named Mitchell; said woman Lindy is worth about two hundred and fifty dollars; Ephraim, about five hundred dollars; Dan, about seven hundred and fifty dollars; Adaline and child Samuella, about five hundred dollars; Silas, about five hundred dollars, and Mitchell about three hundred and fifty dollars.

In answer to the third interrogatory respondent says, that no other slave mentioned in said ante-nuptial contract ever came into his possession as the property of said decedent, nor does he know that said woman Lindy is one of those slaves mentioned in said contract, as she has always been known, as he is informed and believes, by the name of Lindy, and by no other name.

In answer to the fourth interrogatory, this respondent says, he finds much difficulty in determining the annual value of the hire of said slaves, Lindy, and her increase, as named in a preceding answer, said Ephraim having been diseased with scrofula, and said Adaline and Mitchell with rheumatism, and several of them being young, and of but little value at the death of said decedent; but to the best of his belief, they would, taken together or separately, average in the aggregate about three hundred and twenty or thirty dollars annually.

In answer to the fifth interrogatory respondent says, that the said slaves mentioned in the foregoing part of this answer, have been disposed of; that they came into his possession and James L. Goree's, the other defendant, as executors of the last will and testament of said decedent, and that they had, long before the commencement of this suit, been distributed among and delivered to the several legatees of said decedent, and are now in their possession, with the exception of the widow, Martha Goree, who neither owns or has either of them in possession. That said will has been fully executed, a final settlement made, and the executors discharged, which settlement was made on the 2d January, 1846. That the respective value of said slaves is about the same as fixed in respondent's answer to the second interrogatory.

This respondent, having fully answered all said interrogatories in said bill of complaint contained, further answers, and claims, and insists, that he be allowed the same benefit as if the same had been regularly pleaded—1st. That said James L. Goree, deceased, was a bona fide purchaser of said woman Lindy for valuable consideration, without notice of the alleged marriage settlement.

2nd. That more than six years had elapsed between the death of said John Yancy, who survived his said wife, the said Anne W. Yancy, and the commencement of this suit, and that the said suit is barred by the statute of limitations.

3d. That the said pretended marriage settlement was made in the State of South Carolina, and was not recorded according to the laws of that State, and is therefore void as to this respondent, and was void as to his testator, who was a bona fide purchaser of said slave Lindy from said Yancy, for valuable consideration, without notice, &c.

4th. That if said marriage settlement had been properly recorded, or otherwise valid, the sale of said Lindy was made with the approbation and assent of said Anne W. Yancy.

5th. That Lindy is not one of the names mentioned in said settlement.

6th. That respondent and the other defendant, James L. Goree, received the said slaves, as executors of the last will and testament of said decedent, as a part of his estate, and had, before this suit was commenced, disposed of them according to the provisions of said will, by distribution and delivery to the legatees of said estate of said decedent, and had, long before the commencement of this suit made a final settlement of said estate, and had been discharged from said executorship; all of which several matters and things this respondent is ready and willing to aver, maintain, and prove in such manner as this honorable court shall direct; and having fully answered what he is advised is material for him to answer in said bill of complaint, begs to be hence dismissed with his reasonable cost in this behalf most wrongfully sustained.

THE STATE OF ALABAMA, *Perry county.*

Personally came before me, John D. Phelan, judge of the circuit court of the first judicial circuit of the State of Alabama, Andrew B. Moore, who being by me first duly sworn, deposeth and saith, that the statement and facts contained in the foregoing answer are true, to the best of his knowledge, remembrance, information, and belief.

ANDREW B. MOORE.

Sworn to and subscribed before me, this 25th February, 1847.

JNO. D. PHELAN,
Judge 1st cir. of Alabama.

Filed 27th February, 1847.

Teste: A. G. GOOCH, *Clk.*

Replication of complainants.

P. H. DE LANE et als.
vs.
MOORE & GOREE.

The complainants in this cause hereby join issue with the defendants, and deny the truth of defendants' answer and pleas, and of the sufficiency of the matter alleged in it to bar the plaintiffs' suit, and affirm the truth and sufficiency of the bill.

S. D. J. MOORE,
Sol. for complainants.

Filed 4th August, 1847.

A. G. GOOCH, *Clerk.*

W. R. Hamilton's testimony.

In a certain cause pending in the district court of the United States of America, held at Tuscaloosa, wherein Philip H. De Lane, John E. Lykes and wife, Grace A., John M. Chiles and wife, Caroline M., are complainants, against Andrew B. Moore and James L. Goree, defendants.

I, Rufus C. Terry, judge of the county court of Monroe county, Alabama, at the instance of the said complainants in the above entitled cause, have caused William R. Hamilton, who resides in the county of Clark, more than one hundred miles from Tuscaloosa, to come before me, at Monroeville, in the county of Monroe, in the State aforesaid, who, having been by me examined, cautioned, and sworn to testify the whole truth, deposeth and saith as follows, viz:

That witness knew James L. Goree, and also John Yancy, of Monroe county, Alabama, about the year one thousand eight hundred and twenty-one, at Fort Claiborne, in said county, in Alabama. Witness says that James L. Goree purchased a negro woman slave, named Linder, and a child, her first born, of said John Yancy; and said James L. Goree offered to sell the said negroes to witness on the same day of his purchase from Yancy, and witness objected, on the ground that Yancy had not title to the negroes; and said James L. Goree said he knew that, but that Yancy was owing him, Goree, and unless he took those negroes as the only chance, he could not get anything from Yancy.

Witness told Goree he did not wish to buy a law-suit; and James L. Goree said before that purchase, and afterwards, to witness, that he, said James L. Goree, knew the negroes were secured by a marriage contract to Mrs. De Lane and her children; and the witness says he does not know anything more of the matter, except that said matters were of common notoriety about the place at the time the sale took place; and that said negro woman, Linder, and her child were at that time worth six hundred dollars; said lot of negroes being very valuable and likely.

W. R. HAMILTON.

And I, the said Rufus C. Terry, do hereby certify, that I am not counsel or attorney to either of the parties, nor am I interested in the event of said cause.

I further certify, that the said complainants nor defendants have not, nor has either of them, an agent or attorney known to me, within one hundred miles of Monroeville, the place of taking this deposition, and that neither the said complainants or defendants now is, or resides within one hundred miles of Monroeville, so far as I know or believe, and for that reason notice of the taking of this deposition has not been served on them, and that said testimony has been reduced to writing by me, and subscribed by the witness in my presence.

Subscribed and sworn to before me, this fourth day of November,

A. D. 1847, and I now enclose this deposition to the clerk of the court of the United States, at Tuscaloosa, as my full execution of the same.

Witness my hand and seal, this fourth day of November, A. D. 1847.

RUFUS C. TERRY, [L. S.]
Judge, Monroe county court.

Published 9th December, 1847, by agreement of the solicitors of parties in writing on file.

Teste: A. G. GOOCH, *Clerk.*

And which said agreement is in the words and figures following, to wit:

In chancery.

DE LANE et als.
vs.
MOORE & GOREE.

For the purpose of a hearing, the defendants admit that the complainants stated in the bill to be the children of Anne W. DeLane, who was the wife of Jno. W. Yancey, are the children of said Anne W. Yancey; that she died before Yancey, and that he died in the year 1833 or 1834; that in 1842 a suit in chancery was pending in the county of Dallas, in this State, against James L. Goree, the testator of def'ts, et als., for the same and other property; that after the death of testator the defendants were made parties as his executor, and that in 1843 the suit was dismissed for want of prosecution.

The complainants admit that the slave Linder or Lindey was purchased of said Yancey by defendants' testator, as stated in defendants' answer; that said slave was received by said testator in payment for goods, wares, and merchandise purchased by said Yancey and his wife for the use of the family of said Yancey.

It is agreed by the complainants, that if any of the facts admitted by defendants turn out to be untrue, that said defendants shall be entitled to, and have a re-hearing; and it is further agreed that the depositions now taken may be published and used on the hearing, subject to legal exceptions.

S. D. J. MOORE,
Sol'r for compl'ts.
E. W. PECK,
Sol'r for defendants.

December 9th, 1847.

Order at rules.

PHILIP H. DE LANE and others, complainants,
vs.
ANDREW B. MOORE and James L. Goree, def'ts.

In chancery.

On the application of Sam'l D. J. Moore, esq., solicitor for com-

plainants, and on their motion, it is ordered, that this cause be set down for hearing at the next term of this court, upon the bill, answer, exhibits, and testimony of the parties.

Teste: A. G. GOOCH, *Clerk.*

Order from the minutes.

PHILLIP H. DE LANE et als.
vs.
ANDREW B. MOORE and James L. Goree. } 12.

It is ordered that this cause be continued.

Affidavit of John E. Lykes and wife.

STATE OF MISSISSIPPI,
Lowndes county.

This day personally appeared before me, Benjamin F. Taylor, an acting justice of the peace in and for the county of Lowndes, and State of Mississippi, John E. Lykes and his wife, Grace Anne, who states on oath, that they never saw the original marriage or ante-nuptial contract mentioned in the bill in chancery, filed in the U. S. district court, now held in Montgomery, in the State of Alabama, by said Lykes and wife, John M. Chiles and wife, and Philip H. De Lane, against Moore and Goree; that they have made search and inquiry for the same diligently, but could not find or ascertain where it was, nor where any of the witnesses thereto could be found, upon like search and inquiry, and they believe the said original contract is destroyed; that the witnesses to the same are dead.

JOHN E. LYKES,
GRACE ANN LYKES.

27th, 1848.

B. F. TAYLOR, [SEAL.]
Justice of the peace.

Clerk's certificate.

THE STATE OF MISSISSIPPI,
Lowndes county.

I, Daniel Williams, clerk of the probate court in and for said county, do hereby certify, that B. F. Taylor, whose genuine signature appears to the foregoing certificate of affidavit, is, and was at the time of so signing, an acting justice of the peace in and for said county, duly elected, qualified, and commissioned, according to law, and that full faith and credit are due and should be given to all his official acts.

Given under my hand and seal of said court, at Columbus, the 26th day of December, A. D. 1848.

[SEAL.] DANIEL WILLIAMS, *Clerk.*

Judge's certificate.

I, Nathaniel E. Goodwin, judge of probate in [and] for the county of Lowndes, State of Mississippi, do hereby certify, that Daniel Williams, the maker of the next foregoing certificate, and whose genuine signature is thereto affixed, was at the date thereof, and still is, the clerk of the probate court aforesaid, duly commissioned and qualified according to law, and that full faith and credit are due and should be given to all of his official acts as such, as well in courts of justice as thereout; that such authentication is in due form of law, and that said court is a court of record.

Given under my hand and seal, this 26th day of December, A. D. 1848.

NATHANIEL E. GOODWIN, [SEAL.]
Judge of probate.

Filed 12th January, 1849.
Teste: A. G. GOOCH, *Clerk.*

Order from the minutes.

PHILIP H. DE LANE et als.
vs.
ANDREW B. MOORE and James L. Goree.

In chancery.

This day came the parties, by their solicitors, and, on motion of complainants, it is ordered that this cause be continued, and that said complainants have leave to retake the deposition of Wm. R. Hamilton and of Gunyard.

State of South Carolina, office of common pleas and register mesne conveyances, district of Richland.

I, James S. Ginguard, clerk of the court of common pleas, for the district aforesaid, do hereby certify, that the writing contained on the annexed two sheets of paper doth exhibit a true copy, taken from record book H, pages 725 and 726, record bearing date 31st July, anno domini eighteen hundred and sixteen, as appears from the record of the same remaining in the said office.

Given under my hand and the seal of the said court, at Columbia, this second day of July, in the year of our Lord one thousand eight hundred and forty-nine, and in the seventy-third year of the independence of the United States of America.

JAMES S. GINGUARD,
Clerk of court of common pleas of register mesne con. office, Richland district.

I, John Belton Oneall, one of the associate judges of the State afore-

said, and a presiding judge of the court of common pleas, in the State aforesaid, do hereby certify, that the above subscribing James S. Ginguard, and ex officio register of mesne conveyances, is clerk of the aforesaid court; that all due faith and credit is, and ought to be, given to his signature as such, and that the above attestation is in due form of law. 2d July, 1849.

JOHN BELTON ONEALL.

Fees $1 25; paid by Mr. Brumley.

Ante-nuptial contract.

SOUTH CAROLINA,
Richland district.

Articles of agreement made and entered into this twentieth of May, in the year of our Lord one thousand eight hundred and sixteen, between Anne Wood De Lane of the one part, and John Yancey of the other part, both of the town of Columbia, witnesseth: Whereas a marriage is about to take place and be consummated between the said John Yancy and Anne Wood De Lane; and, if the said intermarriage does take, then the parties to these presents do covenant and agree as follows: The parties to this instrument being desirous of securing to the said Anne the right of granting and withholding her consent to the disposition of any of her estate made by the said John Yancy, and the said Anne being entitled to the following estate, both real and personal, to wit, to the negroes Daniel, Cyrus, Galloway, Ben, Mitchell, Jack, Ephraim, Tom, Ned, Edward, Grey, Daphnie, Morge, Eve, Linder, Beck, and Sarah; and being seized and possessed of the following real estate, to wit, a lot of land lying in the town of Columbia, with the improvements thereon, being the lot purchased by the said Anne of James Young, fronting eighty-two feet on Richardson street, and bounded eastwardly on Richardson street, bounded northwardly on the lot of Dr. John Hughes, westwardly on lot of Ben. Rawls, southwardly on the lot "n. owned" by George E. Smith. A more particular description thereof may he had by a reference to the deed of conveyance from the said James Young to the said Anne; and also of one tract of land lying in the district of Richland, containing one hundred acres, in the vicinity of Columbia, and also of a valuable tract of land lying in the district of Richland, on the Congaree river, about eighteen miles below Columbia. Now, the parties to these presents do covenant and agree, that all the aforesaid estate, both real and personal, shall be and remain for the joint use, support, and enjoyment of the said John and Anne, during their joint lives, and to the survivor of them during his or her life; and that the same shall be free from any debts, dues, demands, or contracts of the said John, unless it be under the following conditions and restrictions: that the said John Yancey shall not have the right or power to dispose of any of the foregoing

estate, either real or personal, unless the said Anne shall give her consent thereto; and it is hereby expressly and clearly understood and agreed, that the said John Yancey shall have the right and power to dispose, sell, or convey any of the said estate, upon his procuring and obtaining such consent; and it is hereby covenanted and stipulated that the said Anne shall always have the right and power of granting or withholding her consent, without resorting to the aid of the court of equity or the intervention of a trustee; and all and every transference of any of the aforesaid estate made by the said John, with such consent of the said Anne, shall be good, effectual, lawful, valid, and binding, whether the same be made for his own separate use and benefit, or for the joint use of them both; and in any sale or transference of any of the said estate, either real or personal, the said John shall not be compellable to settle an equivalent thereof on the said Anne, unless there be a stipulation to that effect by and between the parties; the right of making such stipulations is hereby reserved to the parties; and it is further covenanted and agreed, that all and every part of the aforesaid estate, either real or personal, that shall remain undisposed of during their joint lives, shall be and remain for the use, benefit, and support of the survivor during his or her natural life; and at his or her death, the whole of the foregoing estate, both real and personal, shall be equally divided among all the children of the said Anne that may be then living, both of former intermarriage, and those that may be born of the present intermarriage, share and share alike, to them and their heirs forever. And it is the understanding and agreement that none of the aforesaid estate, either real or personal, shall be liable for any debt, contract, judgment, or execution that may now be against him, or that may hereafter be against him, unless by the mutual consent of parties as above stipulated. And it is further understood and agreed, that nothing in this deed shall give the said Anne the exclusive right and power of disposing of any part of the foregoing estate, without the concurrence, consent, and approbation of the said John Yancey.

In witness whereof the parties to these presents have hereunto set their hands and seals, the day and year above written.

JOHN YANCEY, [L. S.]
ANNE W. DE LANE. [L. S.]

Signed and sealed in the presence of—
WALTER CRENSHAW,
JAMES YOUNG.

SOUTH CAROLINA, *Richland county.*

Personally appeared before me James Young, and made oath that he saw John Yancey and Anne W. De Lane sign and seal the foregoing instrument of writing for the uses and purposes therein mentioned.

JAMES YOUNG.

Sworn to before me, July 24, 1816.

J. J. FAUST, *J. P.*

320.

SECRETARY'S OFFICE,
Columbia, 27th June, 1849.

I hereby certify the foregoing to be a true copy from miscellaneous record book C, pages 297, 298, and 299. I further certify, that the record does not show on what day or month the deed was recorded, but suppose it must have been recorded some time between the 30th July, 1816, and the 14th November, 1816, as those are the dates of deeds being recorded before and after the deed in question.

Given under my hand and the seal of the State, the day and year above written.

W. F. ARTHUR,
Dep. Secy. of State.

THE STATE OF SOUTH CAROLINA.

By his excellency Whitemarsh B. Seabrook, governor and commander-in-chief in and over the State aforesaid:

To all to whom these presents shall come: Know ye, that B. R. Henagan, whose signature appears below, is secretary of state of South Carolina; and that William F. Arthur, whose signature appears to his certificate on the copy deed hereunto annexed, is his lawful deputy. Therefore, all due faith, credit, and authority is and ought to be had and given to his proceedings and certificates as such.

In testimony whereof I have hereunto set my hand and caused to be affixed the seal of the State, in the town of Columbia, the second day of July, in the year of our Lord one thousand eight hundred and forty-nine, and in the seventy-third year of the independence of the United States of America.

By the governor: WHITEMARSH B. SEABROOK.
B. K. HENAGAN,
Secretary of State.

Notice to the respondents of taking depositions.

TUSCALOOSA, 31*st July,* 1849.

Messrs. PECK & VANHOOSE:

GENTLEMEN: Please take notice, that on Saturday after the first Monday in August, the deposition of W. R. Hamilton, as a witness for plaintiffs in a suit pending in district court, United States, at Montgomery, for middle district of Alabama, wherein Philip H. De Lane et als. are plaintiffs, and Moore and Goree are defendants, will be taken at the court-house of Clark county, Alabama. Yours, &c.,

S. D. J. MOORE,
Attorney for plaintiffs.

Agreement to open depositions.

We agree that the depositions retaken in the chancery court at Mont-

gomery, in the United States district circuit, wherein P. H. De Lane and others are complainants vs. Moore and Goree, defendants, may be opened by the clerk of said court, subject to legal exceptions.

S. D. J. MOORE,
E. W. PECK.

November 10th, 1849.

THE STATE OF ALABAMA,
City and county of Mobile.

W. R. Hamilton's deposition.

In a cause now pending in the district court of the United States of America, for the middle district of Alabama, held at Montgomery, wherein Philip H. De Lane, John E. Lykes and wife, Grace Ann, John M. Chiles and wife, Caroline M., are complainants, and Andrew B. Moore and James L. Goree are defendants:

I, Charles C. Langdon, mayor of the city of Mobile, and State of Alabama, at the instance of the said complainants in the above entitled cause, have caused William R. Hamilton, who resides in the county of Clarke, and State of Alabama, more than one hundred miles from Montgomery, the place of holding said court, to come before me at the mayor's office, in the city of Mobile; who, being by me examined, cautioned, and sworn to speak and testify the truth, the whole truth, and nothing but the truth, deposes and says as follows: That witness knew James L. Goree, and also John Yancey, of Monroe county, Alabama, about the year one thousand eight hundred and twenty-one, (1821) at Fort Claiborne, in said county of Monroe; that James L. Goree purchased a negro woman slave named Linda, and her child, said to be her first born, of said John Yancey; and said James L. Goree offered to sell said woman and child to witness on the same day of his purchase from Yancey, and witness objected, on the ground that Yancey had no title to the negroes; and said James L. Goree said he knew that, but Yancey owed him, and unless he took the negroes he would lose the debt, for he could get nothing else from Yancey. Witness told Goree he did not wish to buy a law-suit; said Goree remarked to witness, before and after he purchased said negroes from Yancey, that he knew the negroes were secured by a marriage contract to Yancey's wife, who was Mrs. De Laine, and her children; witness knows there was a marriage contract; he has seen and read it; witness does not know whether said marriage contract was ever recorded; witness says the court-house in Monroe was consumed by fire, in the year 1832 or 1833, he thinks; witness knows nothing more, but that these things were generally known about the place before and after the sale took place, and said woman and child were likely, and then worth at least six hundred dollars, being valuable and likely.

W. R. HAMILTON. [SEAL.]

And I, the said Charles C. Langdon, mayor of the city of Mobile,

do hereby certify that I am not of counsel or attorney to either of the parties, nor am I interested in the event of the said cause. I further certify, that the said defendants have no agent or attorney known to me within one hundred miles of Mobile, the place of taking this deposition; and that neither of said defendants resides within one hundred miles of Mobile aforesaid; and for that reason no notice of the taking of this deposition has been served on them; and that the foregoing testimony has been reduced to writing by me, and subscribed by the witness in my presence, this fifth day of October, 1849; and I now enclose the same to the clerk of the district court of the United States at Montgomery, Alabama.

In testimony whereof I have hereunto set my hand, and caused to be affixed the official seal, this 5th day of October, 1849.

CHARLES C. LANGDON, *Mayor.*

Attest:

SAMUEL KINNY,
Clerk of the corporation.

Fees $5.

Affidavit of P. H. De Lane.

In the district court of the United States of America, for the middle district of Alabama, begun and held at Montgomery, on the first Monday after the fourth Monday in November, A. D. 1849, Philip H. De Lane, a plaintiff in the suit of said De Lane and others vs. Moore & Goree, makes oath in due form of law before the undersigned, clerk of said court, that the original ante-nuptial contract between Anne W. De Lane, the mother of said De Lane and John W. Yancey, and which secured to him and his sisters the negroes sued for, and other real estate, was never in his possession, nor to his knowledge did he ever see it; that his mother, after her intermarriage with said Yancey in South Carolina, removed with said Yancey to Claiborne, in Monroe county, in the State of Alabama, where, from the best information he can obtain, (being himself and his sisters too young to recollect,) [she] departed this life in the year 1820; and that, at her death, said Yancey in a manner abandoned him and his sisters, Grace Anne Lykes and Caroline M. Chiles, and they were taken back to Carolina by their friends, and he is informed and believes all that was left fell into said Yancey's possession. That he has made diligent search and inquiry for the said original marriage contract, first of John N. Partridge, who was his guardian, who informed him he had never been in possession of it, and did not know where it was; also, he made inquiry at the office of the mesne conveyances for Richland district, and at the office of the secretary of state in South Carolina, but upon search and inquiry it could not be found at either of the places designated last aforesaid; that he has made inquiry of his sisters, Grace Anne Lykes and Caroline M. Chiles, and also of their respective husbands, John C. Lykes and John M. Chiles, and they, nor neither of them, have ever had possession of said original ante-nuptial contract or settlement; and he believes, and

has just reason to believe, that the said instrument was either destroyed by said Yancey, or destroyed by fire when the court-house in Monroe county, in said State of Alabama, was burned up, as he is informed and believes, in 1833, or about that year; and that the subscribing witnesses, upon diligent search and inquiry, are, as he believes, dead, and cannot be found, and he is the party plaintiff who, at his own instance, and at the instance of his co-plaintiffs, made every exertion to obtain the said writing. Further, upon inquiry he was informed, and so believes, that said Yancey died in the State of Mississippi utterly insolvent, about the year 1836, and that he was informed left nothing; and no one ever took out letters of administration on said Yancey's estate.

PHILIP H. DE LANE.

Sworn to and subscribed before me, this 7th December, 1849, in open court.

MATT. GAYLE, *Clerk*.

Affidavit of John M. Chiles.

Also appeared John M. Chiles before the undersigned clerk, and makes oath, in due form of law, that he knows nothing of the said antenuptial contract; has made search and inquiry diligently where he had any reason to suppose it might possibly be, but never could get any information of the original contract, except that it was the general report about Claiborne, mentioned in the affidavit aforesaid, that the property sued for was secured by such a contract as is attached to the bill filed for its recovery; that he has frequently heard his own wife, Caroline M. Chiles, and John E. Lykes and his wife, Grace Anne Lykes, say, they were not in possession of said contract, and never had been; that, as to their understanding of the contract, it was the same as his; that it was generally understood to secure to the children the negroes therein named and their increase; that John E. Lykes aforesaid started with the said Chiles from his home in Mississippi, but was in feeble health, and took sick on the road, and he believes would be in attendance upon the court if his health would permit.

JOHN M. CHILES.

Sworn to and subscribed, in open court, Dec. 7th, 1849.

MATT. GAYLE, *Clerk, &c.*

Decree.

PHILIP H. DE LANE, John M. Chiles, Martha C. Chiles, John E. Lykes, and *Green* A. Lykes,
vs.
ANDREW B. MOORE and James L. Goree, } 12.

Who were appointed executors of the last will and testament of Jas. L. Goree, deceased.

This day came the parties, by their solicitors, and this suit came on to be heard at this term, and was argued by counsel; and the complainants failing to produce any evidence to prove the several statements in their bill of complaint, or any of them; and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed, as follows, viz: It is ordered, adjudged, and decreed, that the complainants' said bill of complaint be, and the same is hereby, dismissed. It is further adjudged and decreed, that the complainants pay the costs in this suit.

And the said complainants pray an appeal from the above decree to the next term of the Supreme Court of the United States, which is accordingly granted upon their executing bond, to be approved by the presiding judge, in the sum of one hundred dollars; and said complainants having given said bond, with S. D. J. Moore as security, it is approved by the court.

Appeal bond.

UNITED STATES OF AMERICA, *ss:*

Know all men that we, Philip H. De Lane, John E. Lykes, and John M. Chiles, as principals, &c., [and] Samuel D. J. Moore as their security, are held and bound unto Andrew B. Moore and James L. Goree in the penal sum of one hundred dollars; for the payment of which we bind ourselves, our and each of our executors, administrators, heirs, and assigns, forever.

Sealed with our seals, and dated this seventh day of Dec., 1849.

The condition of the above obligation is such, that whereas the said Andrew B. Moore and James L. Goree have obtained a decree against the said Philip H. De Lane, John E. Lykes and his wife, Grace Ann Lykes, John M. Chiles and his wife, Caroline M. Chiles, on this day, in the district court of the United States, for the middle district of Alabama, at Montgomery, sitting as a court of equity, in the cause of said Philip H. De Lane, and John E. Lykes and wife, Grace Ann Lykes, and John M. Chiles and wife, against the said Andrew B. Moore and James L. Goree; from which decree said court has granted an appeal to the Supreme Court of the United States.

Now, if the said De Lane, Lykes and wife, Chiles and wife, shall prosecute their said appeal to effect, and pay the said Moore and Goree all such costs and damages as may be awarded against them by the said Snpreme Court of the United States, and shall abide and perform such decree as may be rendered against them by said Supreme Court, then this obligation to be void; otherwise to remain in full force and effect.

PHILIP H. DE LANE, [L. S.]
JOHN E. LYKES, [L. S.]
JOHN M. CHILES, [L. S.]
S. D. J. MOORE. [L. S.]

Filed 8th December, 1849.

Teste:

MATT. GAYLE, *Clerk, &c.*

Bill of exceptions.

In chancery.

District court of the United States, for the middle district of Alabama.

PHILIP H. DE LANE et als.
vs.
ANDREW B. MOORE and JAMES L. GOREE, executors, &c.

Be it remembered, that, at the December term of this court, in the year 1849, the above case was called for a hearing and final decree; and the complainants, by their counsel, offered to read a deposition of W. R. Hamilton, taken before Charles C. Langdon, mayor of the city of Mobile, in the State of Alabama. The caption and certificate [of] the said mayor being in the words and figures following:

THE STATE OF ALABAMA,
City and county of Mobile, ss:

In a cause now pending in the district court of the United States of America, for the middle district of Alabama, held at Montgomery, wherein Philip H. De Lane, John E. Lykes and wife, Grace Ann, John M. Chiles and wife, Caroline M., are complainants, and Andrew B. Moore and James L. Goree are defendants.

I, Charles C. Langdon, mayor of the city of Mobile, and State of Alabama, at the instance of the said complainants in the above entitled cause, have caused William R. Hamilton, who resides in the county of Clarke and State of Alabama, more than one hundred miles from Montgomery, the place of holding said court, to come before me at the mayor's office in the city of Mobile; who being by me examined, cautioned, and sworn to speak and testify the truth, the whole truth, and nothing but the truth, deposes and says as follows: That witness knew James L. Goree, and also John Yancey, of Monroe county, Alabama, about the year one thousand eight hundred and twenty-one, (1821,) at Fort Claiborne, in said county of Monroe; that James L. Goree purchased a negro woman, slave, named Linda and her child, said to be her first born, of said John Yancey, and said James L. Goree offered to sell said woman and child to witness on the same day of his purchase from Yancey, and witness objected, on the ground that Yancey had no title to the negroes; and said James L. Goree said he knew that, but Yancey owed him, and unless he took the negroes he would lose the debt, for he could get nothing else from Yancey. Witness told Goree he did not wish to buy a law suit. Said Goree remarked to witness, before and after he purchased said negroes from Yancey, that he knew the negroes were secured by a marriage contract to Yancey's wife, who was Mrs. De Lane, and her children. Witness knows there was a marriage contract; he has seen and read it. Witness does not know whether said marriage contract was ever recorded. Witness says the court-house in Monroe was consumed by fire in the year 1832 or 1833, he thinks.

Witness knows nothing more; but that these things were generally known about the place before and after the sale took place, and said woman and child were likely, and then worth at least six hundred dollars, being valuable and likely.

W. R. HAMILTON. [L. S.]

And I, the said Charles C. Langdon, mayor of the city of Mobile, do hereby certify, that I am not of counsel or attorney to either of the parties, nor am I interested in the event of the said cause. I further certify, that the said defendants have no agent or attorney known to me within one hundred miles of Mobile, the place of taking this deposition, and that neither of said defendants resides within one hundred miles of Mobile aforesaid, and for that reason no notice of the taking of this deposition has been served on them; and that the foregoing testimony has been reduced to writing by me, and subscribed by the witness in my presence this fifth day of October, 1849; and I now enclose the same to the clerk of the district court of the United States, at Montgomery, Alabama.

In testimony whereof I have hereunto set my hand and caused to be affixed the official seal, this 5th day of October, 1849.

CHARLES C. LANGDON, *Mayor.*

Fees, $5. Attest: SAMUEL KERNY,
Clerk of the corporation.

The defendants' counsel objected to the reading of the said deposition, for the following reasons—that the deposition of said witness had heretofore been taken at Monroeville, in this State, and was at the last term of this court suppressed, because no notice had been given to the defendants, or their solicitor, the said defendants living within one hundred miles of the place of taking said deposition, and leave given to retake the deposition of said witness. That the complainants afterwards, and before this term, served a notice on the solicitor of said defendants, by leaving the same at his office, the solicitor being at the time absent on the circuit, that the deposition of said witness would be taken on Saturday after the first Monday in August, as a witness for the said complainants, at the court-house of Clark county, Alabama; which said notice was received by the said solicitor of the defendants about ten days before the day fixed for taking the deposition of said witness as stated in said notice, though nothing was said of the receipt of said notice until the cause came on for trial; and that the deposition objected to was taken by requesting the witness to go from his residence, in Clark county, to Mobile, for the purpose of taking said deposition, no notice being given to the defendants, or their solicitor, that the deposition would be taken in Mobile, and not according to said notice. The objections of the defendants *was* sustained, and the deposition excluded, and the complainants excepted.

The complainants then offered to read as evidence two copies of the marriage contract made an exhibit to their bill, which said copies, and the authentication of each, are in the words and figures following:

SOUTH CAROLINA, *Richland district.*

Articles of agreement, made and entered into this twentieth of May, in the year of our Lord one thousand eight hundred and sixteen, between Anne Wood DeLane, of the one part, and John Yancey, of the other, both of the town of Columbia, witnesseth:

Whereas a marriage is about to take place and be consummated between the said John Yancey and Anne Wood DeLane, and if the said intermarriage does take place, then the parties to these presents do covenant and agree as follows: The parties to this instrument being desirous of securing to the said Anne the right of granting and withholding her consent to the disposition of any of her estate made by the said John Yancey, and the said Anne being entitled to the following estate, both real and personal, (to wit,) to the negroes Daniel, Cyrus, Gallaway, Ben, Mitchell, Jack, Ephraim, Tom, Ned, Edward, Grey, Daphine, Mary, Eve, Linder, Beck, and Sarah; and being seized and possessed of the following real estate, (to wit,) a lot of land, lying in the town of Columbia, with the improvements thereon, being the lot purchased by the said Anne of James Young, fronting eighty-two feet on the Richardson street, bounded northwardly on the lot of Dr. John Hughes, westwardly on the lot of Ben Rawls, southwardly on the lot around by George E. Smith; a more particular description thereof may be had by a reference to the deed of conveyance from the said James Young to the said Anne; and also of one tract of land, lying in the district of Richland, containing one hundred acres in the vicinity of Columbia; and also of a valuable tract of land lying in the district of Richland, on the Congaree river, about eighteen miles below Columbia. Now, the parties to these presents do covenant and agree, that all the aforesaid estate, both real and personal, shall be, and remain, for the joint use, support, and enjoyment of the said John and Anne during their joint lives, and to the survivor of them during his or her life; and that the same shall be free from any debts, dues, demands, or contracts, of the said John, unless it be under the following conditions and restrictions: That the said John Yancey shall not have the right or power to dispose of any of the foregoing estate, either real or personal, unless the said Anne shall give her consent thereto; and it is expressly and clearly understood and agreed, that the said John Yancey shall have the right and power to dispose, sell, or convey, any of the said estate, upon his procuring and obtaining such consent; and it is hereby covenanted and stipulated, that the said Anne shall always have the right and power of granting or withholding her consent there[to,] without resorting to the aid of the court of equity, or the intervention of a trustee; and all and every transference of any of the aforesaid estate made by the said John, with such consent of the said Anne, shall be good, effectual, lawful, valid, and binding, whether the same be made for his own separate use and benefit, or for the joint use of them both; and in any sale, or transference of any of the said estate, either real or personal, the said John shall not be compelled to settle an equivalent thereof on the said

Anne, unless there be a stipulation to that effect by and between the parties; the right of making such stipulations is hereby reserved to the parties; and it is further covenanted and agreed, that all and every part of the aforesaid estate, either real or personal, that shall remain undisposed of during their joint lives, shall be, and remain, for the use, benefit, and support of the survivor during his or her natural life. And at his or her death the whole of the foregoing estate, both real and personal, shall be equally divided among all the children of the said Anne that may be then living, both of former intermarriage and those that may be born of the present intermarriage, share and share alike, to them and their heirs forever. And it is the understanding and agreement that none of the aforesaid estate, either real or personal, shall be liable for any debts, contracts, judgment, or execution that may now be against him, or that may hereafter be against him, unless by the mutual consent of parties, as above stipulated. And it is further understood and agreed, that nothing in this deed shall give the said Anne the exclusive right and power of disposing of any part of the foregoing estate without the concurrence, consent, and approbation of the said John Yancey.

In witness whereof, the parties to these presents have hereto set their hands and seals, the day and the year above written.

JOHN YANCEY, [L. S.]
ANNE W. DE LANE. [L. S.]

Signed and sealed in the presence of—
WALTER CRENSHAW,
JAMES YOUNG.

SOUTH CAROLINA, *Richland district.*

Personally appeared before me James Young, and made oath that he saw John Yancey and Anne W. De Lane sign and seal the foregoing instrument of writing, for the use and purposes therein mentioned.

JAMES YOUNG.

Sworn to before me, 24th July, 1816.

J. J. FAUST, *J. P.*

SECRETARY'S OFFICE,
Columbia, 11*th September*, 1843.

I hereby certify the foregoing to be a true copy from miscellaneous record book C, pages 257, '58, and '59.

Given under my hand and the seal of the State the day and the year above written.

W. F. ARTHUR,
Deputy Secretary of State.

STATE OF SOUTH CAROLINA,
Office of common pleas and register
mesne conveyances, district of Richland.

I, James S. Ginguard, clerk of the court of common pleas for the district aforesaid, do hereby certify, that the writing contained on the annexed two sheets of paper doth exhibit a true copy taken from record book H, pages 725 and 726, record bearing date 31st July, anno domini eighteen hundred and sixteen, as appears from the record of the same remaining in the said office.

Given under my hand and the seal of the said court, at Columbia, this second day of July, in the year of our Lord one thousand eight hundred and forty-nine, and in the seventy-third year of the independence of the United States of America.

JAMES S. GINGUARD.
Clerk of court common pleas of register
mesne con. office, Richland district.

I, John Belton Oneal, one of the associate judges of the State aforesaid, and a presiding judge of the court of common pleas in the State aforesaid, do hereby certify, that the above subscribing James S. Ginguard, and ex officio register of mesne conveyances, is clerk of the aforesaid court; that all due faith and credit is and ought to be given to his signature as such; and that the above attestation is in due form of law. 2d July, 1849.

JOHN BELTON ONEALL.

Fees, $1 25. Paid by Mr. Brumley.

SOUTH CAROLINA, *Richland district.*

Articles of agreement made and entered into this twentieth of May, in the year of our Lord one thousand eight hundred and sixteen, between Anne Wood De Lane, of the one part, and John Yancey, of the other part, both of the town of Columbia, witnesseth:

Whereas a marriage is about to take place and be consummated between the said John Yancey and Anne Wood De Lane, and if the said intermarriage does take place, then the parties to these presents do covenant and agree as follows: The parties to this instrument being desirous of securing to the said Anne the right of granting and withholding her consent to the disposition of any of her estate, made by the said John Yancey; and the said Anne being entitled to the following estate, both real and personal, to wit, to the negroes Daniel, Cyrus, Galloway, Ben, Mitchell, Jack, Ephraim, Tom, Ned, Edward, Grey, Daphine, Morge, Eve, Linder, Beck, and Sarah; and being seized and possessed of the following real estate, to wit, a lot of land, lying in the town of Columbia, with the improvements thereon, being the lot purchased by the said Anne of James Young, fronting eighty-two feet on Richardson street, and bounded eastwardly on Richardson street, bounded north-

wardly on the lot of Dr. John Hughs, westwardly on [the] lot of Ben Rawls, southwardly on the lot "*n'owned*" by George E. Smith; a more particular description thereof may be had by a reference to the deed of conveyance from the said James Young to the said Anne; and also of one tract of land lying in the district of Richland, containing one hundred acres, in the vicinity of Columbia; and also of a valuable tract of land lying in the district of Richland, on the Congaree river, about eighteen miles below Columbia: Now the parties to these presents do covenant and agree, that all the aforesaid estate, both real and personal, shall be and remain for the joint use, support, and enjoyment of the said John and Anne during their joint lives, and to the survivor of them during his or her life; and that the same shall be free from any debts, dues, demands, or contracts of the said John, unless it be under the following conditions and restrictions; that the said John Yancey shall not have the right or power to dispose of any of the foregoing estate, either real or personal, unless the said Anne shall give her consent thereto; and it is hereby expressly and clearly understood and agreed, that the said John Yancey shall have the right and power to dispose, sell, or convey any of the said estate, upon his procuring and obtaining such consent; and it is hereby covenanted and stipulated, that the said Anne shall always have the right and power of granting or withholding her consent without resorting to the aid of the court of equity, or the intervention of a trustee; and all and every transference of any of the aforesaid estate, made by the said John with such consent of the said Anne, shall be good, effectual, lawful, valid, and binding, whether the same be made for his own separate use and benefit, or for the joint use of them both; and in any sale or transference of any of the said estate, either real or personal, the said John shall not be compellable to settle *and* equivalent thereof on the said Anne, unless there be a stipulation to that effect by and between the parties; the right of making such stipulations is hereby reserved to the parties; and it is further covenanted and agreed, that all and every part of the aforesaid estate, either real or personal, that shall remain undisposed of during their joint lives, shall be and remain for the use, benefit, and support of the survivor during his or her natural life; and, at his or her death, the whole of the foregoing estate, both real and personal, shall be equally divided among all the children of the said Anne that may be then living, both of former intermarriage and those that may be born of the present intermarriage, share and share alike, to them and their heirs forever. And it is the understanding and agreement that none of the aforesaid estate, either real or personal, shall be liable for any debt, contract, judgment, or execution that may now be against him, or that may hereafter be against him, unless by the mutual consent of parties, as above stipulated. And it is further understood and agreed, that nothing in this deed shall give the said Anne the exclusive right and power of disposing of any part of the foregoing estate without the concurrence, consent, and approbation of the said John Yancey.

In witness whereof the parties to these presents have hereunto set their hands and seals, the day and year above written.

JOHN YANCEY, [L. S.]
ANNE W. DE LANE. [L. S.]

Signed and sealed in the presence of—
WALTER CRENSHAW,
JAMES YOUNG.

SOUTH CAROLINA,
Richland district.

Personally appeared before me James Young, and made oath that he saw John Yancey and Anne W. De Lane sign and seal the foregoing instrument of writing for the uses and purposes therein mentioned.

JAMES YOUNG.

Sworn to before me, July 24th, 1816.

J. J. FAUST, *J. P.*

SECRETARY'S OFFICE,
Columbia, 27th June, 1849.

I hereby certify the foregoing to be a true copy from miscellaneous record book C, pages 297, 298, and 299. I further certify, that the record does not show on what day or month the deed was recorded, but suppose it must have been recorded some time between the 30th July, 1816, and the 14th November, 1816, as those are the dates of deeds being recorded before and after the deed in question.

Given under my hand and the seal of the State the day and year above written.

W. F. ARTHUR,
Dep'y sec'y of State.

The State of South Carolina, by his excellency Whitemarsh B. Seabrook, governor and commander-in-chief in and over the State aforesaid, to all to whom these presents shall come.

Know ye, that B. R. Henagan, whose signature appears below, is secretary of state of South Carolina, and that W. F. Arthur, whose signature appears to his certificate on the copy deed hereunto annexed, is his lawful deputy. Therefore all due faith, credit, and authority is and ought to be had and given to his proceedings and certificates as such.

In testimony whereof I have hereunto set my hand and caused to be affixed the seal of the State, in the town of Columbia, the second day of July, in the year of our Lord one thousand eight hundred and forty-nine, and in the seventy-third year of the independence of the United States of America.

WHITEMARSH B. SEABROOK.

By the governor—
B. K. HENAGAN,
Secretary of State.

And to show the loss or destruction of the original, read the affidavit of the complainant Philip H. De Lane, and an affidavit of the complainant John M. Chiles, which said affidavits are in the words and figures following:

In the district court of the United States of America, for the middle district of Alabama, begun and held at Montgomery on the first Monday after the fourth Monday in November, A. D. 1849, Philip H. De Lane, a plaintiff in the suit of said De Lane and others vs. Moore and Goree, makes oath in due form of law before the undersigned, clerk of ssid court, that the original ante-nuptial contract between Anne W. De Lane, the mother of said De Lane, and John W. Yancy, and which secured to him and his sisters the negroes sued for and other real estate, was never in his possession, nor to his knowledge did he ever see it; that his mother, after her intermarrige with said Yancey in South Carolina, removed with said Yancy to Claiborne, in Monroe county, in the State of Alabama, where, from the best information he can obtain, (being, himself and his sisters, too young to recollect,) departed this life in the year 1820; and that at her death said Yancy, in a manner, abandoned him and his sisters, Grace Anne Lykes and Caroline M. Chiles, and they were taken back to Carolina by their friends, and he is informed and believes all that was left fell into said Yancey's possession.

That he has made diligent search and inquiry for the said original marriage contract, first of John N. Partridge, who was his guardian, who informed him he had never been in possession of it, and did not know where it was; also he made inquiry at the office of the mesne conveyances for Richland district, and at the office of the secretary of state in South Carolina, but upon search and inquiry it could not be found at either of the places designated last aforesaid.

That he has made inquiry of his sisters, Grace Anne Lykes and Caroline M. Chiles, and also of their respective husbands, John C. Lykes and John M. Chiles, and they, nor either of them have ever had possession of said original ante-nuptial contract or settlement; and he believes, and has just reason to believe, that the said instrument was either destroyed by said Yancey, or destroyed by fire when the court-house in Monroe county, in said State of Alabama, was burned up, as he is informed and believes, in 1833, or about that year; and that the subscribing witnesses, upon diligent search and inquiry, are, as he believes, dead, and cannot be found; and he is the party plaintiff who, at his own instance, and at the instance of his co-plaintiffs, made every exertion to obtain the said writing.

Further, upon inquiry he was informed, and so believes, that said Yancey died in the State of Mississippi utterly insolvent, about the year 1836, and that he was informed left nothing, and no one ever took out letters of administration on said Yancey's estate.

PHILIP H. DE LANE.

Sworn to and subscribed before me, this 7th December, 1849, in open court. MATT. GAYLE, *Clk.*

Also appeared John M. Chiles, before the undersigned clerk, and makes oath in due form of law, that he knows nothing of the said ante-nuptial contract; has made search and inquiry diligently where he had any reason to suppose it might probably be, but never could get any information of the original contract, except that it was the general report about Claiborne, mentioned in the affidavit aforesaid, that the property sued for was secured by such a contract as is attached to the bill filed for its recovery; that he has frequently heard his own wife, Caroline M. Chiles, and John E. Lykes and his wife, Grace Ann Lykes, say, they were not in possession of said contract, and never had been; that as to their understanding of the contract it was the same as his; that it was generally understood to secure to the children the negroes therein named and their increase; that John E. Lykes aforesaid started with the said Chiles from his home in Mississippi, but was in feeble health and took sick on the road, and he believes would be in attendance upon the court if his health would permit.

JOHN M. CHILES.

Sworn to and subscribed in open court, December 7th, 1849.

MATT. GAYLE,
Clerk, &c.

Complainants also offered to read the affidavit of John E. Lykes and Grace Anne Lykes, also complainants, sworn to before a justice of the peace of the State [of] Mississippi; which said affidavit, and jurat and certificate of Daniel Williams, clerk of Monroe county, of said State of Mississippi, are in the words and figures following:

STATE OF MISSISSIPPI,
Lowndes county.

This day personally appeared before me, Benjamin F. Taylor, an acting justice of the peace in and for the county of Lowndes, and State of Mississippi, John E. Lykes and his wife, Grace Anne, who states on oath, that they never saw the original marriage or ante-nuptial contract mentioned in the bill in chancery, filed in the United States district court now held in Montgomery, in the State of Alabama, by said Lykes and wife, John M. Chiles and wife, and Philip H. De Lane, against Moore and Goree; that they have made search and inquiry for the same diligently, but could not find or ascertain where it was, nor where any of the witnesses thereto could be found upon like search and inquiry, and they believe the said original contract is destroyed; that the witnesses to the same are dead.

27th, 1848.

JOHN E. LYKES,
GRACE ANNE LYKES,
B. F. TAYLOR, [SEAL.]
Justice of the peace.

THE STATE OF MISSISSIPPI,
Lowndes county.

I, Daniel Williams, clerk of the probate court in and for said county, do hereby certify, that B. F. Taylor, whose genuine signature appears to the foregoing certificate of affidavit, is, and was at the time of so signing, an acting justice of the peace in and for said county, duly elected, qualified, and commissioned according to law, and that full faith and credit are due and should be given to all of his official acts.

Given under my hand and seal of said court, at Columbus, the 26th day of December, A. D. 1848.

[L. S.]

DANIEL WILLIAMS, *Clerk.*

I, Nathaniel E. Goodwin, judge of probate in and for the county of Lowndes, State of Mississippi, do hereby certify, that Daniel Williams, the maker of the next foregoing certificate, and whose genuine signature is thereto affixed, was at the date thereof, and still is, the clerk of the probate court aforesaid, duly commissioned and qualified according to law, and that full faith and credit are due and should be given to all of his official acts as such, as well in courts of justice as thereout; that such authentication is in due form of law, and that said court is a court of record.

Given under my hand and seal, this 26th day of December, A. D. 1848.

NATHANIEL E. GOODWIN, [SEAL.]
Judge of probate.

Filed 12th January, 1849.
Test:

A. G. GOOCH, *Clerk.*

Defendants objected to the reading this affidavit of said John E. Lykes and Grace Anne Lykes; the objection was sustained, and the complainants excepted.

The defendants then objected to the reading of the papers of said marriage settlement, because the said affidavits of De Lane and Chiles did not make out such a case of the loss or destruction as would dispense with the production of the original, and permit said copies, without further proof, to be read; the objection was sustained, and the copies of said marriage settlement *was* excluded, and the complainants excepted; and the complainants offering no other proof, complainants' bill was dismissed; and this bill of exceptions is signed, sealed, and made a part of the record in this cause in term time.

JOHN GAYLE, [SEAL.]
Judge, &c.

I, Matt. Gayle, clerk of the district court of the United States, for the middle district of Alabama, do hereby certify, that the foregoing seventy (70) pages contain a true and correct transcript of the record and